In The

Supreme Court of the United States

October Term, 1978

No. 78-862

J. EVERETT ANDERSON,

Petitioner,

vs.

MAX J. NEUBERGER AND THE BOARD OF ELECTIONS OF SUFFOLK COUNTY, N.Y. ET AL.,

Respondents.

CHARLES E. MORRIS,

Petitioner,

vs.

ALBERT T. HAYDUK AND THE BOARD OF ELECTIONS OF WESTCHESTER COUNTY, N.Y. ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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INDEX

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PETITION FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioners, J. Everett Anderson and Charles E. Morris, pray that Writs of Certiorari issue to review the judgments and opinion of the Court of Appeals of the State of New York entered in Anderson v. Neuberger on August 30, 1978 and in Morris v. Hayduk on September 1, 1978.

OPINIONS BELOW

The opinion of the New York Court of Appeals in Morris v. Hayduk has been reported at 45 N.Y.2d 793 , __NE2d ____. The opinion, which was unanimous, is set forth in the Appendix (20a). The Court of Appeals did not render an opinion in Anderson v. Neuberger; the Court's order is set forth in the Appendix (7a).

The opinions of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, are reported, Anderson v. Neuberger, ___AD2d____, 408 N.Y.S.2d 134 and Morris v. Hayduk, ____AD2d____, 408 N.Y.S.2d 781 and said opinions are set forth, respectively, in the Appendix (5a , 18a).

The memorandum decision of Special Term of the Supreme Court of the State of New York, County of Suffolk, in Anderson v. Neuberger, is not officially reported and is set forth in the Appendix (1a).

The memorandum decision of Special Term of the Supreme Court of the State of New York, County of Westchester, in Morris v. Hayduk, is not officially reported and is set forth in the Appendix (8a).

JURISDICTION

The judgment of the Court of Appeals of the State of New York in Anderson v. Neuberger was entered on August 30, 1978. The judgment and opinion of the Court of Appeals in Morris v. Hayduk was entered on September 1, 1978. This petition for certiorari was filed within 90 days of the earlier of said dates. This Court's jurisdiction is invoked under and pursuant to Title 28 U.S.C. §1257(3).

QUESTION PRESENTED

Does a court made rule of a State's highest court, which demands strict and uniform statewide compliance with an election procedure not expressly required by statute, and which procedure is utterly meaningless and lacking in any conveivable state interest to

justify it, unconstitutionally burden the First Amendment right of the voters of New York State to associate for the advancement of their political beliefs?

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the New York State Election Law, effective December 1, 1977, Chapter 17 of the Consolidated Laws of the State of New York, Section 6-132, is set forth in the Appendix (22a) and may be found in McKinney's 1977 Pamphlet edition of the Election Law, Book 17 of McKinney's Consolidated Laws of New York, Annotated.

STATEMENT OF THE CASE

Petitioners were insurgent candidates for public office in the State of New York. Each sought independantly to challenge a regular party candidate in the Primary Election held September 12, 1978 and each was denied access to the ballot on the sole ground of noncompliance with Election Law, §6-132, subd. [2] as interpreted by the New York State Court of Appeals in Rutter v. Coveney, 38 N.Y.2d 993, 348 N.E.2d 913, 384 N.Y.S.2d 437 (1976).

In Rutter, the New York State Court of Appeals, by a divided court, adopted a court-made rule of state-wide applica-

tion which superimposes a technical, unnecessary and meaningless requirement upon Election Law §6-132, sbud. [2], viz., that the Assembly District of each subscribing witness be given at the foot of each page of the nominating petition signed by the qualified voters of the political party. However, as pointed out by the dissenting opinion in Rutter and by the Petitioners in the case at bar, the information concerning the subscribing witnesses' Assembly District is superfluous information in all but 6 of the 62 counties of the State of New York. Id. The trial court herein, in Morris v. Hayduk, made the same finding with respect to the County of Westchester. (8a, 12a-16a).

On the sole basis of Rutter, Petitioner J. Everett Anderson was denied access to the ballot as a candidate in the Democratic Party Primary Election for the public office of Representative to the United States Congress from the Second Congressional District, Suffolk County, New York.

Again on the sole basis of Rutter, Petitioner Charles E. Morris was denied access to the ballot as a candidate in the Conservative Party Primary Election for the public office of Member of the Assembly from the 93rd Assembly District, Westchester County New York.

There was no allegation of fraud in either case, nor any other allegation or finding that the subscribing witnesses were not in fact fully qualified or that their qualifications as such were not readily verified and verifiable from the information actually supplied on the nominating petitions. In each case, there was no question concerning the sufficiency of the number of qualified voters who had signed the nominating petitions. Yet in each case, the primary election was cancelled because the insurgents nominating petition was invalidated on the strength of Rutter.

At the trial level in Morris v. Hayduk and again in the New York State Court of Appeals, the application of Rutter was challenged as repugnant to the Federal Constitution. (Trial Brief, pages 6-8; Court of Appeals Brief, p. 12.)

In Anderson v. Neuberger, the constitutional question was raised for the first time in Anderson's motion for permission to appeal in the Court of Appeals. (Court of Appeals Brief, pp. 5, 10-11.)

Petitioner Anderson asked the New York State Court of Appeals to reconsider

Rutter in the light of this Court's decisions in Storer v. Brown, 415 U.S. 724 (1974) and O'Brien v. Skinner, 414 U.S. 524 (1974) on the ground that Election Law, §6-132, subd. [2], as construed by the Court of Appeals in Rutter would be repugnant to the Federal Constitution as a burden to insurgent candidates without any important State interest. (Court of Appeals Brief, pp. 10-11.)

Petitioners did not seek an injunction from this Court prior to the Primary Election on September 12, 1978 because, as noted by Mr. Justice Marshall in Fishman v. Sehaffer, 429 U.S. 1325 (1976), questions as to burdensome filing procedures are too novel and uncertain to warrant action by a single Justice or by the Court without affording the State the opportunity for plenary review before the Court.

Moreover, an injunction prior to the election was unnecessary since the claim will not be rendered moot by the occurrence of the election. American Party of Texas v. White, 415 U.S. 767 (1974); Storer v. Brown, supra, 415 U.S. 724 (1974).

Nor do Petitioners now seek the invalidation of the general election or the ordering of a special election. The question presented is novel and uncertain in this Court and was subject to "rational disagreement" in the courts below. See Starr, "Federal Judicial In-

validation As a Remedy for Irregularities in State Elections," 49 N.Y.U. Law Rev. 1092, 1101 (1974).

Petitioners seek the vacatur of the New York State Court of Appeals judgments herein and a remand to that Court for further consideration in light of the decisions of this Court in Storer v. Brown, supra and O'Brien v. Skinner, supra.

Petitioners do not seek invalidation of Election Law, §6-132, subd. [2]. There is a distinction between the question presented in this case and in O'Brien v. Skinner, supra, wherein this Court invalidated the statute due to the interpretation of the New York State Court of Appeals. Unlike O'Brien, this case involves what in essence is a court-made rule superimposed upon an otherwise valid statute. Only the court-made rule in Rutter constitutes a constitutionally impermissable burden upon the First Amendment rights of the qualified voters who signed the nominating petitions in the case at bar to associate for the advancement of their political beliefs.

REASON FOR GRANTING THE WRIT

The Federal Question Herein Has Not Heretofore Been Determined by this Court

In Storer v. Brown, supra, this Court made the observation that, "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases ***." Nevertheless, this Court set rigorous standards for proper analysis of state election laws and left no doubt that election laws which burdened access to the ballot without an important state interest would be struck down. Storer v. Brown, supra, 415 U.S., 738-746; O'Brien v. Skinner, 414 U.S., 527-531. See Mandel v. Bradley, 432 U.S. 173 (Per Curiam, 1977).

There is only one important State interest asserted by the New York Court of Appeals for its court-made rule in Rutter, supra:

> "The requirements of subdivision 3 of section 135 [now subd. 2 of §6-132] of the Election Law are designed to facilitate the discovery of irregularities or fraud in designation petitions."

Yet it is clear from the dissenting opinion that the Court was aware that "Assembly District" information was unnecessary for the very purpose enunciated, in all but 6 counties of the State. Even the statute itself mandates such information only "where required." (24a) Rutter requires the information in all counties, superimposing on the statute a further, purposeless technicality in most counties of the State.

The Rutter opinion is only a Memorandum decision of the Court of Appeals. It was rendered in a summary election proceeding in the election year of 1976. The difficulty is that the same, summary dispositions based on Rutter occurred in election year 1978 in the cases at bar and will continue to occur in the future unless there is a remand for reconsideration based on the type of analysis suggested in Storer v. Brown, supra.

The facts contained in the Rutter majority and dissenting opinions and in the record herein indicate that in the counties of Westchester and Suffolk the "Assembly District" information required by Rutter does not "facilitate the discovery of irregularities or fraud in designation petitions." Id.

Whether further proceedings upon remand will disclose other purposes and factual data is a matter which can be left for plenary development in the Court of Appeals. The cases should be remanded for the development of an adequate record within the guidelines for analysis set by Storer v. Brown, supra. See Mandell v. Bradley, supra.

CONCLUSION

For the foregoing reasons, the petition herein should be granted.

Respectfully submitted,

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November 28, 1978

APPENDICES

APPENDIX A

SUPREME COURT SUFFOLK COUNTY

SPECIAL TERM, PART I

By: COWAN J.S.C.

DATED: August 17 ,1978

INDEX #78-13709
MOTION #E-19
DATE: 8/14/78

In the Matter of the Application
of
MAX J. NEUBERGER
Petitioner

VS.
J. EVERETT ANDERSON, et al.,
Respondents.

In the Matter of the Application
of
J. EVERETT ANDERSON,
Petitioner,

vs.
MAX J. NEUBERGER, et al.,
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The petition of MAX J. NEUBERGER to invalidate the designating petition of J. EVERETT ANDERSON, for the public office of Member of the House of Representatives, 2nd Congressional District, Suffolk County Index #78-13709, is, for the purpose of this decision, consolidated with the petition for the public office of Member of the House of Representatives, 2nd Congressional District, Suffolk County Index #78-13916.

As a threshold issue, respondent ANDERSON challenges the standing of petitioner, citizen-objector NEUBERGER, to maintain the instant invalidating proceeding on the grounds that the specifications filed by the citizen-objector were received by the BOARD OF ELECTIONS on either August 3, 1978 or August 4, 1978, which, in either event, is more than the statutory requirement

of the Election Law, Sec. 6-154, which would require filing of the specifications of the grounds of the objections on August 2, 1978. As evidence of the late filing, respondent ANDERSON points to the evenlope which contained the specifications of the objections, which bears two postmarks, August 3, 1978, and August 4, 1978.

On the other hand, the witness for petitioner NEUBERGER, one GARY J. HAUSLER, testified that on August 2, 1978, he prepared the specifications of objections. That he witnessed the citizen-objector NEUBERGER verify the same on that same date, and that at approximately 7:00 P.M. on August 2, 1978, he personally went to the main post office, Fifth Avenue, Bay Shore, New York and personally dropped the envelope containing the written specifications into the mail slot.

The Court determines this threshold issue in favor of the petitioner NEUBERGER. While the dates of postmark may be controlling in certain fact situations, in the opinion of this Court, the uncontroverted testimony of petitioner's witness to the effect that he personally mailed the specificatio s to objections on August 2, 1978, constitutes timely filing. Citizen-objector to NEUBERGER has standing to maintain this present proceeding.

A more serious objection, however, is that of petitioner NEUBERGER, who alleges that all of the signatures appearing on the designating petition for J. EVERETT ANDERSON are invalid, in that the statement of witness, appearing at the bottom of each page of the designating petition does not contain the assembly district of the subscribing witness, rendering each page defective and not in accordance with Election Law. Sec. 6-132(2). It is the opinion of this Court that the statement of witness must contain the assembly district, and the failure to do so renders the entire sheet of designating petition of that witness invalid. Matter of Rutter v. Coveney, 38 N.Y.2d 993; Matter of Berry v. Dodd, 38 N.Y.2d 995; Matter of Nolan v. Coveney, Supreme Court, Suffolk County, Index #77-12898; Matter of Ingle v. Coveney, Supreme Court Suffolk County, Index #77-12899.

Accordingly, the petition to validate is dismissed, and the petition to invalidate is granted.

The foregoing shall constitute the order of the Court.

_____

J.S.C.

APPENDIX B

_____AD2d_____ A - August 22, 1978

2468 E

In the Matter of Max J. Neuberger, respondent, v. J. Everett Anderson et al,, appellants.

In the Matter of J. Everett Anderson, appellant, v. Max J. Neuberger et al., respondents.

Grenier, Humes & Nolan, New York, N.Y. (Eugene J. McMahon and Robert A. Kelly of counsel), for appellant Anderson.

Bernard T. Callan, Bay Shore, N.Y. (Gary J. Hausler of counsel), for respondent Neuberger.

In consolidation proceedings to (1) invalidate the petition designating J. Everett Anderson as a candidate in the Democratic Party Primary Election to be held on September 12, 1978 for the public office of Representative to the United States Congress from the 2nd Congressional District, and (2) to validate said petition, the appeal is from a judgment of the Supreme Court, Suffolk County (GOWAN, J.), dated August 17, 1978, which, after a hearing, (1) dismissed the proceeding to vali-

date the petition and (2) granted the petition to invalidate the said petition.

Judgment affirmed, without costs or disbursements.

Where the uncontroverted proof establishes, as is the case here, that the specifications of the grounds of the objections were in fact timely mailed, sections 6-154 and 1-106 of the Election Law are satisified. As Special Term also found, the failure of the subscribing witness to list his Assembly District (Election Law, § 6-132, subd 2) renders the designating petition invalid under the authority of Matter of Rutter v. Coveney (38 NY2d 993). The rule of that case was not changed by the amendment to subdivision 1 of section 6-132 of the Election Law (L 1978, ch 373).

MOLLEN, P.J., HOPKINS, DAMIANI, SHAPIRO and O'CONNOR, JJ., concur.

August 23, 1978

IN RE NEUBERGER v ANDERSON 2468 E
IN RE ANDERSON v NEUBERGER

APPENDIX C

COURT OF APPEALS
OF THE STATE OF NEW YORK

ORDER OF AUGUST 30, 1978
DENYING MOTION FOR LEAVE TO APPEAL
[SAME TITLE]

A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

s/ Joseph W. Bellacosa
Joseph W. Bellacosa
Clerk of the Court

APPENDIX D

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

In the Matter of the Application of CHARLES E. MORRIS, Candidate for the Conservative Party Nomination for Member of the Assembly 93rd Assembly District,	:	INDEX NO. 13584/
	:	DECISION
	:	&
Petitioner,	:	ORDER
-against-	:	
ALBERT T. HAYDUK and JOSEPH A. McNAMARA, Commissioners of Election of Westchester County and WILLIAM D. BRUNS and MARION B. OLDI, Deputy Commissioners of Election of Westchester County, Constituting the Board of Elections of the County of Westchester, and ALBERT A. CAPELLINI, Candidate for the Conservative Party Nomination for Member of the Assembly in the 93rd District, and JAMES P. CANNON, objector,	:	
Respondents.	:	

FOR AN ORDER declaring valid the designating petition which designated the petitioner as a candidate for the Conservative Party Nomination for Member of the Assembly in the 93rd Assembly District in the Conservative Party Primary to be held on September 12, 1978.	:

BURCHELL, J.,

This is a proceeding pursuant to Article 16 of the Election Law in which the petitioner seeks an order declaring valid his designating petition as candidate for the Conservative Party nomination for Member of the Assembly in the 93rd Assembly District in the Conservative Party Primary Election to be held on September 12, 1978. Pursuant to objections filed by the respondent Cannon, the Board of Elections has refused to include the name of the petitioner on the ballot upon the grounds that the designating petitions filed by the petitioner do not include the Assembly District of the subscribing witness. At oral argument, the respondents raised additional points of law challenging both this proceeding as well as including new grounds for rejection of the designating petition.

The objection raised herein as to jurisdiction involves the question of the timely institution of these proceedings. Section 16-106(2) of the Election Law provides that the proceeding must be instituted within fourteen days after the last day to file petitions. August 10, 1978 was the last day in which this proceeding was to have been commenced. The order to show cause was executed on August 10, 1978, and it provided for service upon all the named parties on that day. The Board of Elections was served on or about 3:00 p.m. of that date by leaving a copy thereof with a Deputy Commissioner of Elections.

As to the respondent Capellini, the affidavit of service indicates that a copy was served upon his secretary and administrative assistant on that day. It is alleged that the respondent Capellini was present at the same location. Further, a copy of the order to show cause was left at the door of the respondent Capellini's residence after his wife refused service. A copy of the order to show cause was mailed to the respondent Capellini at the address indicated on his designating petition; both the "nailing and mailing" were accomplished on August 10, 1978. Further, both telegrams and mailgrams were sent to the respondent Capellini on August 10, 1978.

As to the respondent Cannon, a copy of the order to show cause was left at his residence with a 16 or 17 year old female who identified herself as his daughter at approximately 4:00 p.m. on August 10, 1978. Mailing of the order to show cause and the identical telegrams and mailgrams as to the respondent Cannon were all accomplished on August 10, 1978.

The Court has not been apprised of nor been furnished with any facts which would dispute the factual affidavits of service submitted by the petitioner. The issue raised by the respondents is, that since the mailing was not complete, i.e., the mail did not reach the respondents Capellini and Cannon on August 10, 1978 and therefore service was defective, and the Court lacks jurisdiction.

While it is recognized that jurisdiction attaches upon service and the proceeding is not instituted within the meaning of the Election Law upon the execution of the order to show cause; it also is well recognized that if there is a "nailing" and "mailing" before the final day in such a manner as to give adequate notice, the Court has obtained jurisdiction. O'Connor v. Power, 22 NY 2d 889 (1968) aff'g 30 AD 2d 926 (2nd Dept. 1968). The Court finds that the procedure herein was more than adequate to afford the respondents notice and that the Court has jurisdiction to hear the matter.

The central issue of these proceedings involves the absence of the petitioner's designating petition of the Assembly District designation for subscribing witnesses. Section 6-132 (2) of the Election Law provides that each page of the designating petition shall contain a statement, the equivalent of an affidavit, indicating the residence and election district in the town or city of the subscribing witness. Further, the section reads "(fill in Ward, if any, otherwise fill in Assembly District where required)." None of the sheets of the petitioner's designating petition contain the Assembly District of the subscribing witnessess. It should be noted that the form used contained a blank space with a line for all information required of subscribing witnesses except in the case of Assembly District. For Assembly District, there is but a small space near the right hand side of the page, without a line.

Article 6 of the Election Law does not indicate when or in what circumstances subscribing witnesses must designate their Assembly Districts. Section 6-130 of the Election Law provides that signatories to designating petitions must set forth their Assembly District in the City of New York and in the towns in the County of Nassau.

The petitioner argues that that requirement, as it applies to signatories, was placed in the statute

because in the named locales the residence of voters cannot be accurately ascertained without reference to Assembly District, whereas in Westchester County, election districts are numbered by town or city. Accordingly, the exact location of a subscribing witness' residence can be ascertained by reference to the town and election district alone.

The requirements of a subscribing witness are three fold:

1) That he or she be a qualified voter of the state;

2) That he or she be an enrolled voter of the same party as the voters qualified to sign the petition, and

3) That he or she be a resident of the political subdivision in which position is to be voted for.

The Legislature has removed the requirement that the subscribing witness be last registered for a general election. In order to insure against election fraud or sharp election practices, the Legislature has seen fit to require a means by which the eligibility of subscribing witnesses can be readily ascertained. The Commissioners of Elections in Westchester can readily ascertain whether a subscribing witness

does in fact meet the eligibility requirements by reference to the rolls of voters for the election district in the political subdivision. While the respondent Board has merely denied the petitioner's allegation that the requisite information as to signatory eligibility could be ascertained without reference to the additional information concerning Assembly Districts, the respondents have not either by oral argument, affidavit or memorandum indicated the materiality of this requirement.

Clearly where electors are enrolled by Assembly District, such a requirement would be a necessary element to any process of checking the authenticity of the designating petition. Absent such a need, the failure to place the Assembly District would be a mere irregularly which should not form a basis to invalidate the designating petition.

The respondent Capellini argues that the cases of In the Matter of Vari, 42 NY 2d 980 (1977) and Rutter v. Coveney, 38 NY 2d 993 are controlling. The Vari case dealt with the subscribing witnesses' failure to place Assembly Districts on a designating petition. The Court of Appeals in Vari supra, sustained the lower Court decision to invalidate the designating petitions, upon the rational of Rutter supra. In Vari supra, the subscribing witnesses all resided in the City of Mount Vernon,

and the designating petition was for a candidate in the primary election for the 88th Assembly District, which was within the jurisdictional limits of the City. In Rutter supra, the Court of Appeals also held invalid designating petitions wherein subscribing witnesses had either omitted or erroneously indicated their Assembly District. The dissenting opinion in Rutter, supra urged that the designating petitions should not have been invalidated and that the will of the voters should not be thwarted upon mere technicalities.

It should be noted that in Vari, supra, the designating petitions besides having failed to include the present Assembly District also failed to include the Assembly District at the time of the last resignation of the designating petition as then required. The Legislature has removed this last requirement in its recent legislative overhaul of the Election Law. Further, in Rutter supra, which involved Suffolk County, the designating petitions failed to include Assembly Districts. It is apparent that the election districts in the Rutter case were designated only in relation to Assembly District as opposed to a political subdivision.

The legislative removal of the required statement as to prior registration is indicative of its intention to limit the material requirements of a designating petition to only those

items which would enable and facilitate the expeditious reference to the signatories thereon. The prior registration requirement was necessary to determine whether the subscribing witness was in fact a duly qualified voter for the then present election.

This requirent of Assembly District is now, except in situations where voters are not listed by Assembly District, a "nonabsolute" and a "non-prejudicial technicality"; and, accordingly, the respondent Board's actions in invalidating the designating petition was improper.

The respondent Cannon at the oral argument raised specific objections to the designating petition. Counsel for the petitioner has contended that the Court may not consider new material which was not before the Board. This Court has the authority to consider the entire petition and hear objections of law and fact with respect thereto. See, Flowers v. Wells, 57 AD 2d 636 (2nd Dept. 1977).

Counsel at oral argument raised the issue that the numbering of the sheets was improper in that the numbers were in the section at the botton for party candidate and not office candidate. What is apparent is that the numbering of the sheets only relate to the office candidate and not to the party candidate,

and there was no numeral designation for party candidate. The Court finds that this error is not fatal to the petitioner. See, Matter of Foley, 12 NY 2d 652 (1962).

Counsel for the objector also raised an objection that many of the signatories to the petition did not put down their residence as it applies to a political subdivision, but only as it relates to their postal address. As to this issue, there has been no factual allegation as to what number of the signatures are improper.

Accordingly, the relief sought by the petitioner herein is granted, and the respondent Board is directed to place the petitioner's name upon the appropriate ballot.

The foregoing constitutes the decision and order of this Court.

Dated: WHITE PLAINS, NEW YORK
August 16, 1978

E N T E R

GEORGE D. BURCHELL
Justice of the
Supreme Court

APPENDIX E

E/mc

____AD2d____ A - August 22, 1978

2474 E In the Matter of Charles E. Morris, etc., petitioner-respondent, v. Albert T. Hayduk and Joseph A. McNamara, Commissioners of Election of Westchester County, et al., etc., appellants, and James P. Cannon, respondent.

Capellini, Gilleece & Altman, White Plains, N.Y. (Kevin P. Gilleece and Arthur L. Altman of counsel), for appellant Capellini.

Samuel S. Yasgur, County Attorney, White Plains, N.Y. (Lester D. Steinman of counsel), for appellants Hayduk, McNamara, Bruns & Oldi.

Aurnou, Rubenstein, Killigrew & Morosco, White Plains, N.Y. (B. Anthony Morosco of counsel), for petitioner-respondent.

In a proceeding inter alia to validate the petition designating the petitioner as a candidate in the Conservative Party Primary Election to be held on September 12, 1978, for the public

office of Member of the Assembly from the 93rd Assembly District, the appeal is from a judgment of the Supreme Court, Westchester County (BURCHELL, J.), entered August 17, 1978, which (1) granted the application and (2) directed the Board of Elections to place petitioner's name upon the appropriate ballot.

Judgment reversed, on the law, without costs or disbursements and application is denied (see Matter of Vari v. Hayduk, 42 NY2d 980; Matter of Rutter v Coveney, 38 NY2d 993; see, also, Matter of Neuberger v. Anderson, ____AD2d____ [decided herewith]).

MOLLEN, P.J., HOPKINS, DAMIANI, SHAPIRO and O'CONNOR, JJ., concur.

APPENDIX F

STATE OF NEW YORK

COURT OF APPEALS

---

2 No. 538 MEMORANDUM

In the Matter of the Application of Charles E. Morris, Appellant,

vs.

Albert T. Hayduk &ors., Commissioners &c., and Albert A. Capellini &ano., Respondents.

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

MEMORANDUM:

The order appealed from should be affirmed, without costs. The statutory language which we have previously interpreted as requiring a subscribing witness to a designating petition in all areas of the State to list his current Assembly District (Matter of Vari v Hayduk, 42 NY 2d 980; see Matter of Rutter v Coveney, 38 NY2d 993) remains unchanged by the recent recodification of the Election Law (compare Electtion Law, §6-132, subd 2, with L 1971, ch 424). Had the Legislature wished to change the law so as to require only

those subscribing witnesses who reside in New York City and Nassau County to list their current Assembly District, it could have done so quite simply, as it has done with respect to signatories to petitions (see Election Law, §6-130; Election Law, §6-132, subd 1, as amd by L 1978, ch 373, §57). Indeed, legislation to that effect was introduced during the 1978 session of the Legislature (see 1978 S 9431, A1274). That proposal was not enacted into law.

* *

Order affirmed, without costs, in a memorandum. All concur.

Decided September 1, 1978

APPENDIX G

§ 6-132. Designating petition; form

1. Each sheet of a designating petition shall be signed in ink and shall contain the following information and shall be in substantially the following form:

I, the undersigned, do hereby state that I am a duly enrolled voter of the ..... party and entitled to vote at the next primary election of such party, to be held on ....., 19....; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Names of candidates	Public Office or party position	Place of residence (also post office address, if not identical)
.....	.....	.....
.....	.....	.....

I do hereby appoint ..... (insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party) as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer	Residence
.....	.....	.....
.....	.....	.....
Ward (if any) or Assembly District (when required)	Election District	Town or city (except in the city of New York, the county)
.....	.....	.....
.....	.....	.....

2. There shall be appended at the bottom of each sheet a signed statement of a witness who is a duly qualified voter of the state and an enrolled voter of the same political party as the voters qualified to sign the petition, and who is also a resident of the political subdivision in which the office or position is to be voted for. However, in the case of a petition for election to the party position of member of the county committee, residence in the same county shall be sufficient. Such a statement shall be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject

the person signing it to the same penalties as if he had been duly sworn. The form of such statement shall be substantially as follows:

I, ... (name of witness) state: I am a duly qualified voter of the State of New York and am an enrolled voter of the ..... party. I now reside at ..... (residence address, also post office address if not identical) which is in the ..... (fill in number) election district of the ..... Ward/Assembly district (fill in Ward, if any, otherwise fill in Assembly District where required) in the Town or City of ..... (fill in name of city or town) in the County of ..... (fill in name of county).

Each of the individuals whose names are subscribed to this petition sheet containing ..... (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself to be the individual who signed this sheet.

I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date..... .....
Signature

3. In lieu of the signed statement of a witness who is a duly qualified voter of the state qualified to sign the petition, the following statement signed by a notary public or commissioner of deeds shall be accepted:

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing .....(fill in number) signatures, who signed same in my presence and who, being by me duly sowrn, each for himself, said that the foregoing statement made and subscribed by him, was true.

Date: ....
(Signature and official title of officer administering oath)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-862

J. EVERETT ANDERSON,

Petitioner,

v.

MAX J. NEUBERGER AND THE BOARD OF ELECTIONS OF SUFFOLK COUNTY, N. Y., ET AL.,

Respondents.

CHARLES E. MORRIS,

Petitioner,

v.

ALBERT T. HAYDUK AND THE BOARD OF ELECTIONS OF WESTCHESTER COUNTY, N. Y., ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION BY RESPONDENT BOARD OF ELECTIONS OF SUFFOLK COUNTY, NEW YORK

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION BY RESPONDENT BOARD OF ELECTIONS OF SUFFOLK COUNTY, NEW YORK

Question Presented

The petitioner misstates the issue sought to be reviewed. The issue is whether the Election Law § 6-132, subd. 2, as construed by the court of appeals of the State of New York

to require that the assembly district of each subscribing witness be indicated at the foot of each page of the nominating petition signed by the qualified voters of the political party, operates as a restriction which is so severe as itself to constitute an unconstitutionally onerous burden on the exercise of the first amendment rights of the petitioner who unsuccessfully sought access on the regular party primary ballot.

Statement of the Case

The co-petitioner, J. Everett Anderson, was denied access on the ballot for the democratic party primary election held on September 12, 1978 for the public office of representative to the United States Congress from the second congressional district. The Supreme Court of the State of New York (County of Suffolk) ruled that the designating petition on Mr. Anderson's behalf was invalid because the subscribing witness failed to show his assembly district as required by the election law § 6-132, subd. 2 (1a-4a). The appellate division, second judicial department affirmed the lower court for the same reason (5a, 6a). Leave to appeal to the court of appeals was denied on August 30, 1978 (7a).

The co-petitioner, Charles E. Morris, was denied access to the ballot for the conservative party primary election held on September 12, 1978 for the public office of assemblyman to the New York Assembly from the 93rd assembly district. The Supreme Court of the State of New York (County of Westchester) ruled that the designating petition on behalf of Mr. Morris was valid notwithstanding that it did not include the assembly district of the subscribing witness. That court based its conclusion on the premise that the New York Legislature in its recent legislative overhaul of the election law made the indication of assembly district a non-mandatory requirement (15a, 16a). The appellate division, second judicial department unanimously

reversed the lower court (18a, 19a). The court of appeals of the State of New York, in a memorandum, affirmed the appellate division on the ground that the recent legislative overhaul to the election law did not affect or amend the relevant statutory language which was previously construed to require a subscribing witness to the designating petition in all areas of the state to list his current assembly district (20a, 21a).

In both proceedings, the holding of *In the Matter of Rutter* v. *Coveney,* 38 N.Y.2d 993, 348 N.E.2d 913, 384 N.Y.S.2d 437 and related cases (See: *Matter of Clune* v. *Hayduk,* 34 N.Y.2d 965, 318 N.E.2d 600, 360 N.Y.S.2d 408; *Matter of Gordon* v. *Catania,* 34 N.Y.2d 964, 318 N.E.2d 600, 360 N.Y.S.2d 408; *Matter of Sciarra* v. *Donnelly,* 34 N.Y.2d 970, 318 N.E.2d 600, 360 N.Y.S.2d 410), was invoked to render invalid the designating petitions.

In *Rutter,* the court of appeals of the State of New York construed the election law § 6-132, subd. 2, to require subscribing witnesses to designating petitions to indicate their current assembly district. The court held that the omission or erroneous indication of the assembly district rendered any designating petition invalid.

Contrary to petitioner's opinion (See: petition at 8), the court, in *Rutter, judicially construed* The Election Law § 6-132, subd. 2, *to require* subscribing witnesses to indicate their election districts. That same court in the proceedings at bar held that the recent legislative overhaul to the election law did not obviate the *Rutter* construction. Thus, the petitioners do indeed challenge the constitutionality of the election law as construed by the court of appeals in *Rutter,* and the proceedings at bar. The court's construction of the statute therefore must be read in tandem with the election law. See: *O'Brien* v. *Skinner,* 414 U.S. at 531, 532.

No substantial federal question is presented by the appeal.

The petitioners believe that the two orders of the New York State Court of Appeals should be vacated and the matters remanded for reconsideration in light of *Storer* v. *Brown,* 415 U.S. 724. The Board of Elections of Suffolk County, New York submits that the federal question presented is insubstantial for two reasons: First, in *Storer,* this court was concerned with a state's election law claimed to confer monopolistic status upon the regular party by excluding the names of independent parties and their candidates from appearing on the election ballot, there being no compelling state interest worthy of protection. In the proceedings at bar, the petitioners were not independent candidates. They were instead persons who sought a ballot line in a regular party primary election. The petitioners do not claim that the New York State election law discriminates against them or confers monopolistic status on a particular political organization or persons. For this reason, the federal question presented is insubstantial.

Second, the rationale invoked by the lower courts to set aside the designating petitions was based upon the holding of *In the Matter of Rutter* v. *Coveney,* 38 N.Y.2d 993, 348 N.E.2d 913, 384 N.Y.S.2d 437, where the New York State court of appeals stated that:

> "[T]he requirements of subdivision 3 of § 135 of the election law are designed to facilitate the discovery of irregularities or fraud in designating petitions. This purpose *may only be achieved* by mandating *uniform and strict* compliance with the statutory requirements (citation of cases omitted). To make exceptions, county by county, although seemingly justified in a particular instance, sanctions a practice which in another circumstance could lead to abuses. (Citation of case omitted)." (Emphasis added.)

The compelling interest of a state in insuring the integrity of its political process from frivolous or fraudulent candidates was recognized in *Bullock* v. *Carter,* 405 U.S. 134, 146 and *Jenness* v. *Fortson,* 403 U.S. 431, 442. Accordingly, the identification of the assembly district by the subscribing witness to the designating petition passes constitutional muster and presents an insubstantial federal question to be reviewed by this court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: Hauppauge, New York
December 28, 1978

Respectfully submitted,

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On Petition for a Writ of Certiorari To The Court of Appeals of the State Of New York

BRIEF FOR RESPONDENT BOARD OF ELECTIONS OF WESTCHESTER COUNTY IN OPPOSITION TO THE PETITION FOR CERTIORARI

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BRIEF FOR RESPONDENT BOARD OF ELECTIONS OF WESTCHESTER COUNTY IN OPPOSITION TO THE PETITION FOR CERTIORARI

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Preliminary Statement

This brief is submitted in opposition to so much of an improperly consolidated petition for a writ of certiorari which seeks to review an Order of the Court of Appeals of the State of New York, entered September 1, 1978, which unanimously

affirmed an Order of the Supreme Court of the State of New York, Appellate Division, Second Department, entered August 22, 1978, which unanimously reversed an Order of the Supreme Court of the State of New York, Westchester County which granted the petition of Charles E. Morris (hereinafter "Petitioner") and directed that his name appear on the ballot as a candidate for the Conservative Party nomination for Member of the Assembly for the 93rd Assembly District, State of New York in the September 12, 1978 primary election.

The opinion of the New York Court of Appeals is reported at 45 NY 2d 793, 409 NYS 2d 1; and it is reproduced in Petitioner's Appendix, pages 20a - 21a. The opinion of the Supreme Court of the State of New York, Appellate Division Second Department is at present reported only at 408 NYS 2d 134; it is reproduced in Petitioner's Appendix, pages 18a-19a.

The opinion of the Supreme Court of the State of New York, Westchester County has not yet been officially reported; it is reproduced in Petitioner's Appendix, pages 8a-17a.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 USCA 1257(3).

However, the petition for a writ of certiorari to the New York Court of Appeals in Morris v. Hayduk, et al. has been consolidated with the petition for certiorari in the case of Anderson v. Neuberger and the Board of Elections of Suffolk County, New York et al. That consolidation is improper since consolidation is permitted only where, inter alia, certiorari to review is sought to the same court. U.S. Sup. Ct. Rule 23(5), 28 USCA.

In Anderson v. Neuberger the New York Court of Appeals as a matter of discretion declined to review the order of the Supreme Court, Appellate

Division, Second Department, affirming a judgment of the Supreme Court, Suffolk County, which invalidated the designating petition of J. Everett Anderson. See New York State Constitution Article 6, Section 3(b)(6). Accordingly, the writ of certiorari must issue in that case, if at all, to the lower Appellate tribunal and not the Court of Appeals. American Railway Express Company v. Levee, 263 U.S. 19, 20-21 (1923).

QUESTIONS PRESENTED BY THE PETITION IN MORRIS V. HAYDUK

1. Whether this Court should review the Federal constitutional question posed in the instant petition for certiorari, where that question was neither presented to nor adjudicated by New York State's highest court?

2. Whether in view of Petitioner's determination not to challenge the results of the general election, and the current availability of a State judicial proceeding in which the claimed

constitutional issue can be reviewed, the instant case is moot?

3. Whether access to the ballot is unduly burdened by New York State's requirement that candidates for public office include in their designating petitions the assembly district of residence of a witness who subscribes to the authenticity of the signatures on that petition?

4. Whether certiorari to review two cases from different courts may be sought in a single consolidated petition?

STATUTORY PROVISION INVOLVED

Section 6-132 of New York State Election Law is set out in the Appendix to the Petition for Certiorari at pages 22a - 25a.

Statement of the Case

On or about July 27, 1978 a designating petition was filed on behalf of the Petitioner Charles E. Morris (hereinafter alternatively

referred to as "Morris") as a candidate for the Conservative Party nomination for Member of the Assembly for the 93rd Assembly District, State of New York. Written objections to the designating petition, and specifications in support of those objections, were duly filed in the office of the Board of Elections in the County of Westchester (hereinafter "Board of Elections") by James P. Cannon (hereinafter "Cannon").

After reviewing the petition and Cannon's objections, the Board of Elections found that the "Statement of Witness" required by Section 6-132 of the Election Law was improperly executed since the Assembly District of residence of each of the subscribing witnesses executing that statement had been omitted. By letter dated August 2, 1978 Cannon and Morris were notified that the objections had been sustained and that the name of Charles Morris would not appear on the primary ballot.

Challenging this determination, Morris instituted a proceeding pursuant to Article 16 of the New York State Election Law in Supreme Court, Westchester County seeking, inter alia, an order validating his designating petition and directing the Board of Elections to place his name on the ballot for the then imminent election. Named as Respondents in this proceeding were the Board of Elections, Albert Capellini (another candidate for the Conservative Party nomination for the same Assembly District seat) and the Objector Cannon.

The lower court granted the petition and directed the Board of Elections to reinstate Morris' name on the primary ballot [8a-17a]*. In doing so, that Court declined to follow well settled case law which mandated uniform and strict compliance with election law require-

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* Page references, unless otherwise noted, refer to the petition for certiorari and the appendix accompanying that petition.

ments [Matter of Vari v. Hayduk, 42 NY 2d 980, 398 NYS 2d 415 (1977), Matter of Rutter v. Coveney, 38 NY 2d 993, 384 NYS 2d 437 (1976)], and opined that pursuant to the newly recodified Election Law, the failure to include in a designating petition the assembly district of residence of subscribing witnesses was a "non-absolute and nonprejudicial technicality". Respondents appealed.

Rejecting the notion that the rule of uniform and strict compliance had been abrogated by the recodification of the Election Law, the Appellate Division, Second Department unanimously reversed the lower court's order and dismissed Morris' petition [18a-19a]. Morris then appealed to the New York Court of Appeals.

Confirming its prior decisions, New York State's highest court unanimously ruled that the language and intent of the subject statute, which it had previously interpreted as imposing a

mandatory, uniform, statewide requirement that subscribing witnesses to a designating petition list their correct assembly district of residence, remained unchanged by the recodification of the Election Law, [20a-21a]. Accordingly, the Appellate Division's order dismissing Morris' petition was affirmed.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

Morris' failure to raise the question of the constitutionality of §6-132 of the Election Law before the New York Court of Appeals.*

Although arguably raised in Supreme Court, Westchester County, the constitutional issue framed in the instant petition was not ruled upon there. Rather, that court concluded that the recent recodification of §6-132 legislatively overruled the uniform and strict compliance construction given by the Court of Appeals to the statutory predecessor to that section. Based upon this determination the lower court declined

*In Anderson v. Neuberger, consolidated herewith, the constitutional issue was concededly not raised until leave to appeal was sought to the New York Court of Appeals [6]. Where the constitutional issue is not raised below, the Court of Appeals will not consider it Wein v. Levitt, 42 NY 2d 300, 306, 397 NYS 2d 758, 762 (1977); Cohen and Karger, Powers of the New York Court of Appeals at p. 641. As a result, the jurisdiction of this court may not attach. Bailey v. Anderson, 326 US 203, 206-207 (1945).

to follow established precedent and held that the omission of the assembly districts of residence of the subscribing witnesses did not invalidate the designating petition [8a-17a].

Apparently content with having prevailed on state law grounds, petitioner abandoned the federal constitutional claim. Thus on appeal to both the Appellate Division and the Court of Appeals petitioner's argument focused exclusively upon the proper construction to be given §6-132 of New York State's Election Law.

Presented solely with an issue of statutory interpretation, both the Appellate Division and the Court of Appeals held that §6-132, as did its predecessor provision, imposed a uniform statewide requirement that a subscribing witness to a designating petition list his current assembly district of residence [20a - 21a].

Neither the Appellate Division nor the Court of Appeals was ever asked to consider whether that statute, as so construed, imposed an unconstitutional burden upon the exercise of First Amendment rights. Nor is there any mention of that issue in either of the courts' opinions [18a-19a; 20a-21a].

Under these circumstances, the petition for certiorari should be denied. It is well settled that this court will decline to adjudicate the constitutionality of a state statute where that question has neither been presented to nor passed upon by that state's highest court. See e.g. Adickes v. S.H. Kress and Company, 398 U.S. 144, 147 n.2 (1970); McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940).

In a vain effort to avoid this result, petitioner alleges that the constitutional issue presented in the instant petition was raised at page 12 of his brief in the Court

of Appeals [6]. However, an examination of that page (See Appendix to this Brief at A1) compels the opposite conclusion. Although the words "constitutional question" may be found on that page, the context in which the terms appear in no way relates to the issue belatedly posed in this Court.

The absence from this proceeding of the New York State Attorney General provides further evidence that the constitutionality of the Election Law provision at issue here was never properly challenged in state court. Where a state statute is attacked on constitutional grounds, courts in New York State as well as the party making the attack must give official notice to the State Attorney General and permit him to intervene in support of the statute's constitutionality. Civil Practice Law and Rules 1012(b); Rules of Practice of the New York Court of Appeals, 22 NYCRR 500.2. Neither the

petitioner nor any court which considered this case issued the required notice to the Attorney General.

Equally unavailing is Petitioner's attempt to separate the Court of Appeals' interpretation of Election Law §6-132 from the words of the statute itself by challenging the former while conceding the constitutionality of the latter [8]. Manifestly, the construction given to this statute by New York State's highest court is as much a part of that statute as the express language enacted by the Legislature. National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 422 (1963); Winters v. New York, 333 U.S. 507, 514 (1948). Moreover, that construction is presumed to be correct and is binding upon this court. Hortonville Joint School District v. Hortonville Education Association, 426 U.S. 482, 488 (1976).

Finally, in a concession that the record in the case at bar is inadequate for consideration of the supposed constitutional issue belatedly raised here, Petitioner seeks a remand to the New York Court of Appeals for the development of additional facts bearing upon the purposes and operation of the statute in question [8,11]. Of course, this relief is unavailable in the Court of Appeals since the jurisdiction of that Court, with exceptions not here relevant, is limited to review of questions of law. New York State Constitution Article 6, Section 3(a). Under these circumstances, if Petitioner wants a record upon which to litigate his supposed constitutional claim he is at liberty to commence a declaratory judgment action in State Supreme Court. See infra, p.16-17.

Mootness

Petitioner does not challenge the outcome of the general election relating to the Assembly seat for the 93rd Assembly District. Indeed, Petitioner purports not to challenge the constitutionality of the Election Law provision which resulted in the invalidation of his designating petition [7]. But see infra p.14. Yet in reliance upon Storer v. Brown, 415 U.S. 724 (1974) and American Party of Texas v. White, 415 U.S. 767 (1974), petitioner contends that his case presents a live controversy. Petitioner's reliance is misplaced; the case is moot.

Unlike the issues presented in Storer v. Brown, supra, and American Party of Texas v. White, supra, the constitutionality of §6-132 of the Election Law does not present a recurring issue capable of evading review. Under New York procedure the constitutionality of this section may be treated outside the

context of an imminent election in a declaratory judgment action brought in New York State Supreme Court. CPLR §3001; see, Boryszewski v. Bridges, 37 N.Y. 2d 361 365, 372 N.Y.S. 2d 623 (1975). In such a proceeding a full State court hearing on the constitutional issue would be afforded, permitting the development of the complete record, not present here, essential for proper appellate review.

The Constitutional Issue Presented is Meritless

Assuming arguendo, that the issue of the statute's constitutionality were properly before this Court, the statute would clearly be upheld.

The cases cited by petitioner [see e.g. Mandel v. Bradley, 433 U.S. 173, (1977)] stand for the proposition that access to the ballot may not be unduly burdened by onerous technical state law requirements. As expounded by this Court, the applicable test of constitutionality is

whether,

> "[I]n the context of [New York] politics could a reasonably diligent . . . candidate be expected to satisfy the [ballot access] requirements or will it be only rarely that [such] candidate will succeed in getting on the ballot?"

Storer v. Brown, supra, 415 US, at 742.

Here, there was no onerous burden to overcome; rather, there was merely a lack of due diligence by the petitioner.

The relevant requirement of §6-132 of the Election Law is simple. A witness who subscribes to the authenticity of signatures of registered voters on a prospective candidate's designating petition must complete a written statement verifying that he or she is a duly enrolled voter of the same party as the voters qualified to sign the petition and that he or she resides in the political subdivision for which the public office was established. Thus, the statement requires that the subscribing witness' name, party affiliation and address including the Assembly District

of residence be set forth. Election Law §6-132(2) [22A - 25A].

For the past several years the Court of Appeals has interpreted this requirement as mandating strict and uniform compliance in order to facilitate the discovery of irregularity and fraud in designating petitions. Matter of Sciarra v. Donnelly, 34 NY 2d 970, 360 NYS 2d 410 (1974), Matter of Rutter v. Coveney, supra; Matter of Vari v. Hayduk, supra. That the Court of Appeals would follow this well-settled rule in Petitioner Morris' case was hardly surprising.

Nevertheless, the petitioner's designating petitions failed to comply with §6-132 (2) of the Election Law. None of the subscribing witnesses to that designating petition listed the Assembly District of their residence. Unquestionably, the necessary information was readily obtainable, and imposed no burden whatsoever on the

petitioner or those who might vote for him. The Constitution affords no remedy for carelessness.

CONCLUSION

The writ of certiorari should be denied.

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JONATHAN LOVETT
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December, 1978

APPENDIX

APPENDIX

REPRINT OF RELEVANT PORTIONS OF PAGES
11 AND 12 OF PETITIONER'S BRIEF IN THE
NEW YORK COURT OF APPEALS

"It is most respectfully submitted that because the statute provides the precise form of the petition, the rule enunciated in Vari, if it is adhered to results in misleading persons who would participate in the democratic process by being candidates for election and who, applying common logic and common understanding of language, will often conclude that in counties such as Westchester the Assembly District is not required (particularly where it is not required for signors, by the very terms in the statute), and will be subject to technical invalidation of their petitions while the "insiders" who know the "truck" will of course be able to satisfy the hypertechnical requirement. Even if the Legislature had intended this result there would be a profound constitutional question with respect to its rationality. It is most respectfully submitted however that where the statute may be read in the way the appellant urges, it is even more profoundly wrong for this Court to create the hypertechnical requirement in a situation where it is meaningless.

The election law does not require a subscribing witness to provide his Asssembly District number in his statement except where that number identifies his election district. Accordingly, the petition here strictly complied with the statute as written, and the petitioner should be restored to the ballot."